IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2373 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARAYAN D KHUSHALANI - Petitioner(s)
Versus
DISTRICT PRIMARY EDUCATION OFFICER & 1 - Respondent(s)

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Appearance :
MR NALIN K THAKKER for Petitioner(s) : 1,
MR RA MISHRA for Respondent(s) : 1,
DELETED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 01/08/2007

ORAL JUDGMENT

1. The petitioner has challenged the charge-sheet dated 31.08.99 whereunder a charge was levelled against him in respect of an incident which occurred

in the year 1982-83 on his resigning from the services and obtaining an employment in another school and again after a gap of about three months joining the respondent school after some litigations. The issuance of charge-sheet and the initiation of disciplinary proceedings resulted into imposition of penalty of reducing him to the minimum stage of his pay scale of Rs. 4000-6000 for a period of five years with future effect. This penalty was imposed vide order dated 18.12.2000. The said order is as it is stated hereinabove impugned in this petition.

2. Few facts in nutshell deserve to be set out for appreciating the controversy in its true perspective.

2.1 The petitioner joined the services of the concerned school as Assistant Teacher on 07.08.74. The petitioner thereafter resigned from the said school on 09.11.82 as he was appointed in a secondary school at Palitana. The petitioner, however, opted for the original school after a period of about three months and requested the management of the original school and the concerned authorities for withdrawing the resignation letter. As per the say of the petitioner the letter was addressed on 14.02.83. However, as it appears from the record, the letter was dated 14.07.83. Nothing turns much on that and therefore be that as it may. The management did not accede to the request for withdrawal of the resignation and the request was turned down vide order dated 14.07.83. This action of the management was challenged by the petitioner by preferring regular

Civil Suit No. 824 of 1984 in the court of Civil Judge (S.D.), Junagadh. The said suit was dismissed by the court vide order dated 31.01.86.

2.2 The dismissal of the suit was challenged by the petitioner by preferring appeal no. 28 of 1986 before the District Court, Junagadh. The appeal came to be allowed vide order dated 02.05.87. The appellate Court ordered reinstatement of the petitioner with effect from 14.07.83 i.e the date on which the management had turned down the request for withdrawal of the resignation. The management and the concerned authorities filed Second Appeal before this Court being Second Appeal No. 1076 of 1987 and the same was dismissed by this Court. Thereafter, the petitioner came to be reinstated vide order dated 3-5.11.88. The reinstatement was with effect from the year 1983. The petitioner was thus reinstated and was posted on his duties as such in the school.

2.3 On 31.08.99, a charge-sheet came to be issued to the petitioner alleging that he had acted in an absolute irresponsible manner and that he played fraud upon the government as he had applied for the employemnt in another school without obtaining prior permission of the concerned authorities. Therefore, for this misconduct the petitioner was subjected to departmental proceedings. It deserves to be noted that the charge sheet was issued without calling for any explanation whatsoever from the petitioner and the charge-sheet itself indicates that the inquiry officer was appointed and he was ordered to complete the

inquiry within a period of two months from the date of the charge-sheet. Ultimately as it is stated hereinabove the penalty of reduction to the lowest minimum stage of the scale came to be imposed for a period of five years with future effect which is impugned in this petition.

3. Mr Nalin Thakkar, learned advocate appearing for the petitioner has submitted that not only the inquiry was conducted contrary to the principles of natural justice and the relevant rules but the charge-sheet itself was not maintainable as it was issued belatedly. The gross delay in issuance of the charge-sheet in itself is sufficient to quash the charge-sheet and also quash the resultant order of punishment.

3.1 Mr Thakkar has relied upon the decision of the Apex Court in the case of State of Madhya Pradesh vs. Bani Singh and Another reported in AIR 1990 SC 1308 and in the case of State of Andhra Pradesh vs. N. Radhakishan reported in AIR 1998 SC 1833 in support of his submission that in such a case the charge-sheet which is belatedly issued deserves to be quashed and set aside.

4. Mr R.A Mishra, learned advocate appearing for the contending respondent submitted that the fact remains to be noted that the petitioner did not obtain the requisite permission before applying to the school in which he sought employment and he joined that school after resigning. The charge-sheet therefore is to the

effect that he in fact had defrauded the authorities and obtained even salary from that school and thereafter withdrew the resignation and sought to be reinducted in the school in which he was serving before he resigned. This action of the petitioner was the subject matter of the disciplinary proceedings and therefore even if the charge-sheet is issued belatedly the same is maintainable and the resultant penalty order also deserves to be sustained.

4.1 Mr Mishra has also submitted that this petition deserves to be dismissed also on the ground of availability of efficacious remedy to the petitioner by way of preferring appeal. Mr Mishra has placed reliance on the decision of this Court in the case of Arvind Dahyabhai Adhyaru vs. District Panchayat, Junagadh & Another reported in 1995(1)GLH 984 in support of his submission that when the alternative remedy is available the petition under Article 226 of the Constitution of India is not maintainable.

5. This Court has perused the record and proceedings and heard counsel for the respective parties at length. This Court is unable to accept the submission of Mr Mishra, learned advocate appearing for the respondents. The fact remains that the factum of the petitioner joining another school and resigning on 09.11.82 was quite known to all. The factum of resignation as well as withdrawal of resignation was also known to all and rather it was subject matter of protracted litigation up to this Court. The petitioner was also compelled to file Regular Civil

Suit No. 824/84 in the Court of Civil Judge (Senior Division), Junagadh which was dismissed. Then the petitioner had challenged the said judgement and order by preferring Appeal No. 28/86 before the District Court and the District Court allowed the said appeal.

5.1 The order of the appellate Court goes to show that the reinstatement was ordered from the date of the rejection of the petitioner's request for withdrawing his resignation. In other words, no conditions were attached to the order of reinstatement. It was an absolutely unconditional order of reinstatement and it was always open to the management and the authorities contesting the appeal to seek permission to initiate departmental proceedings on the ground of the alleged irregularity or misconduct on the part of the petitioner. However, no liberty was sought and the judgement of the appellate court was challenged by way of second appeal being Second Appeal No. 1707/87 before this Court which was dismissed. Even at the second appeal stage also as it appears from the records no permission for seeking any liberty to initiate disciplinary proceedings was sought or granted. Mr Mishra, learned advocate appearing for the contesting respondent has not been in a position to indicate any such permission and/or even request for initiating any proceedings.

6. Assuming for the sake of examining the plea that the subject matter of initiation of departmental inquiry were absolutely different than the subject matter of suit and litigation which ended into second

appeal and that therefore the authorities were at liberty to initiate the disciplinary proceedings as it was pertaining to misconduct wherein the fraud is alleged against the petitioner then also the authorities ought to have issued charge-sheet right after reinstatement of the petitioner which was ordered in the month of November 1988 itself. The petitioner had been reinstated in the year 1988 and after a lapse of about 11 years for the first time the charge-sheet came to be issued pertaining to the alleged incident of misconduct and/or defrauding the authorities in the year 1982-83.

7. A much acclaimed principle of the prejudice caused because of such belated charge-sheet operates with its full force so far as the present facts and circumstance are concerned. The charge-sheet itself was so belatedly issued that the petitioner could not have effectively defended his case in the matter. The factum of resignation and his employment in another school was known to all and it is not the case of the respondents that the delay in issuance of charge-sheet was in any way on account of the role played by the petitioner. Nor is it the case of the respondents that the petitioner was in any way responsible for the belated issuance of charge-sheet. No material is indicated showing that the charge-sheet could not be issued earlier for any overt act or omission on the part of the petitioner. In view of this the charge-sheet deserves to be quashed and set aside.

8. The submission of Mr Mishra with regard to the

alleged fraud on the part of the petitioner and availability of alternative remedy are bereft of merits inasmuch as the issuance of the charge-sheet itself is challenged and this Court is convinced by the submission that the charge-sheet itself cannot be sustained. When the concerned charge-sheet is impugned in the proceedings under Article 226 of the Constitution of India and when the matter is already admitted and it is listed for final disposal it would not be appropriate at this stage to relegate the petitioner for availing alternative remedy so far as so called fraudulent practice adopted by the petitioner is concerned it can well be said that the factum of petitioner's applying for a job and doing job in another school was quite known to all and no one prevented the management and authorities to issue charge-sheet if thought fit right after reinstatement which was ordered in the year 1988. The submission therefore is required to be rejected as it is devoid of any substance.

9. It deserves to be noted that before even issuance of charge-sheet the management and authorities did not think it fit to even seek an explanation from the petitioner and without even calling for any explanation from the petitioner straight way issued charge-sheet. On the contrary the charge-sheet itself is containing the submission with regard to appointment of inquiry officer. This speaks volume about the approach of the concerned authorities which deserves to be deprecated. This Court has no hesitation therefore in quashing the charge-sheet

itself as it is grossly belated and not issued with a purpose commendable in eye of law.

10. This petition is accordingly allowed. The charge-sheet dated 31.08.99 therefore is itself quashed and set aside and as the charge-sheet is quashed and set aside the resultant order of penalty is also required to be quashed and set aside. Accordingly, the same is quashed and set aside. As the impugned order is quashed and set aside, the petitioner shall be entitled to all the consequential benefits accruing there from. The petitioner is at liberty to make appropriate representation to the concerned authorities for receiving the benefit of higher grade pay scale under the prevalent scheme and any representation if made by the petitioner may be considered and decided by the concerned authorities in accordance with law. Rule is made absolute to the aforesaid extent.

(S.R.BRAHMBHATT, J.)

Divya//